REMARKS

The Office Action mailed December 28, 2005 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1-15 are pending in this application. Claims 1-15 stand rejected. Claims 1 and 10 have been amended herein. Claims 16-20 have been canceled.

The rejection of Claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over Bailey et al. ("Bailey") (U.S. Pat. No. 6,731,201) in view of Kido (U.S. Pat. No. 5,079,688) is respectfully traversed.

Bailey describes a communication module (300) adapted to be received by an appliance (100) having an appliance controller (201). The communication module includes a power supply (310), a communication protocol translator (320), a power line communication transceiver (330), and a line driver (340). The protocol translator translates signals received from a communication media into appliance controller signals, and vice versa. Notably, Bailey does not describe nor suggest a diagnostic module configured to monitor a plurality of power line parameters.

Kido describes a power monitor circuit wherein AC power-line voltage is converted by a DC power supply (20) to regulate DC voltage (Vcc). A rectifier-filter (23) converts the AC voltage to a non-regulated DC voltage. The output of the rectifier-filter rises in quick response to the power-on state and drops in quick response to the significant AC voltage drop. If the output of DC power supply drops below a specified threshold due to AC power-line failure or due to its own failure, a DC low-voltage signal is generated topwer controller (21). A latch circuit (26) is energized with the non-regulated DC voltage to latch the DC low-voltage signal if it occurs during the interval between the first and second AC transitory signals and supplies a DC alarm signal to computer power supply and logic unit (30). Notably, Kido does not describe nor suggest a diagnostic module configured to measure a plurality of power line parameters, rather Kido describes a power monitor circuit configured to measure only changes in DC voltage and interface with computer power supply and logic unit. Specifically, Kido does not describe nor suggest a diagnostic module

configured to measure the frequency, voltage, average voltage, and/or ground faults of the power line.

Claim 1 recites a communication and power line diagnostics system comprising, among other things, "a diagnostics module configured to measure a plurality of power line parameters."

Neither Bailey nor Kido, considered alone or in combination, describe or suggest a communication and power line diagnostics system including a diagnostics module configured to measure a plurality of power line parameters, as recited in Claim 1. Rather, in contrast to the present invention, Bailey describes a communication module adapted to be received by an appliance having an appliance controller and Kido describes a power monitor circuit that measures only changes in direct current voltage and does not measure a plurality of power line parameters. Accordingly, Claim 1 is respectfully submitted to be patentable over Bailey in view of Kido.

Claims 2-9 depend from independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over Bailey in view of Kido.

Claim 10 recites a method of communicating data between an appliance and a power line carrier using a communication interface, wherein the method comprises, among other things, "diagnosing the power line carrier with a diagnostics module configured to measure a plurality of power line carrier parameters and to interface with the power line carrier and the communication interface ...."

Neither Bailey nor Kido, considered alone or in combination, describe or suggest a method of communicating data between an appliance and a power line carrier using a communication interface, wherein the method includes diagnosing the power line carrier with a diagnostics module configured to measure a plurality of power line carrier parameters and to interface with the power line carrier and the communication interface, as recited in Claim 10. Rather, in contrast to the present invention, Bailey describes a communication module adapted to be received by an appliance having an appliance controller and Kido describes a power monitor circuit that measures only direct current voltage and does not measure a

plurality of power line carrier parameters and/or interface with a power line carrier and a communication interface Accordingly, Claim 10 is respectfully submitted to be patentable over Bailey in view of Kido.

Claims 11-15 depend from independent Claim 10. When the recitations of Claims 11-15 are considered in combination with the recitations of Claim 10, Applicants respectfully submit that dependent Claims 11-15 likewise are patentable over Bailey in view of Kido.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-15 be withdrawn.

Moreover, Applicants respectfully submit that the Section 103 rejection of presently pending Claims 1-15 is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been an obvious to one of ordinary skill in the art to combine Bailey with Kido. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the Applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, as is well established, the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See In re Gordon, 221 U.S.P.Q.2d 1125 (Fed. Cir. 1984). Furthermore, the Federal Circuit has determined that:

> [I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

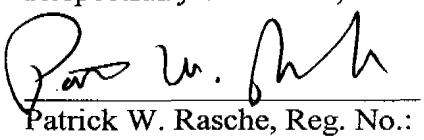
In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will

support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown.

Accordingly, since there is no teaching or suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 1-15 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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